



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

JRE

Docket No: 4318-99

2 December 1999



Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 21 October 1999. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you were discharged from the Navy on 23 December 1961 without entitlement to disability benefits administered by the Department of the Navy, based on the findings of the Physical Review Council (PRC), as approved by the Naval Physical Disability Review Board (NPDRB) following a full and fair hearing and the Secretary of the Navy, that your injuries were incurred as a result of your own misconduct/willful neglect, and therefore not in the line of duty. The Board noted that at the time those findings were made, the Naval Disability Evaluation System (DES) was responsible for making an independent line of duty/misconduct determination for the Secretary of the Navy in cases such as yours. Although the DES would consider the findings of the line of duty investigation prior to making its determination, it was not bound by those findings. The absence of a formal line of duty investigation did not relieve the DES of its duty to make an independent a line of duty/misconduct determination, or invalidate its determination. The Board reviewed the evidence considered by the PRC and NPDRB in your case, and concluded that it is sufficient to demonstrate that you injuries were the result of your own intentional misconduct. The Board did not accept your unsubstantiated contention that you sustained disabling injuries to

your hand when you brought your "...right hand back in a gesture" and the hand went through a window.

In view of the foregoing, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director